

UNITED STATES OF AMERICA  
DISTRICT OF MAINE

SHELIA DENNISON,	)	
	)	
Plaintiff	)	
	)	
v.	)	Civil No. 00-266-B-S
	)	
PRISON HEALTH SERVICES,	)	
et al.,	)	
	)	
Defendants	)	

**RECOMMENDED DECISION ON DEFENDANT CHANDLER'S  
MOTION FOR SUMMARY JUDGMENT**

Shelia Dennison has filed a 42 U.S.C. § 1983 complaint against multiple defendants. (Docket No. 1.) She alleges that while she was an inmate at the Charleston Correctional Facility her due process rights were infringed and she was subjected to cruel and unusual punishment in that the defendants were deliberately indifferent to her serious medical conditions. In this order the court addresses a motion by Scott Chandler, a correctional officer at the facility, seeking summary judgment in his favor. (Docket No. 29.) Dennison's claims against Chandler arise from cleaning work assigned to Dennison by Chandler on two different occasions; this was work that Dennison contends caused her serious pain and further injury. I recommend that the court **GRANT** Chandler's motion for summary judgment.

## DISCUSSION

### *Summary Judgment Standard and the State of These Pleadings*

Chandler is entitled to summary judgment only if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). In evaluating whether a genuine issue is raised I must view all facts in the light most favorable to Dennison and give her the benefit of all reasonable inferences in her favor. Santiago-Ramos v. Centennial P.R. Wireless Corp., 217 F.3d 46, 52 (1st Cir. 2000).

However, pursuant to District of Maine Local Rule of Civil Procedure 56 my consideration of record materials is limited by the parties’ statements of material facts, Dist. Me. Loc. R. Civ. P. 56(e) (“The court shall have no independent duty to search or consider any part of the record not specifically referenced in the parties’ separate statement of facts.”), and Dennison’s response to Chandler’s motion does not conform to the requirements of the Local Rule. Dennison has not responded to each of Chandler’s forty-one paragraphs of material facts with a separate paragraph either admitting, denying, or qualifying the assertions. Dist. Me. Loc. R. Civ. P. 56(c). The paragraphs that Dennison has not responded to in her statement of material fact are deemed admitted. With respect to the response to the eight paragraphs that Dennison has selected to address, she does not support these disputations by record citations. Subsection (e) of the Local Rule requires: “An assertion of fact set forth in a statement of material facts shall be followed by a citation to the specific page or paragraph of identified record material supporting the assertion.” Dist. Me. Loc. R. Civ. P. 56(e) (emphasis added). Instead,

Dennison has referenced her numbered paragraphs that are contained in the “Factual Narrative” section of her “Consolidated Memorandum” opposing Chandler’s motion and a summary judgment motion by co-defendants Prison Health Services and Debra Hartley. Where it is possible I have examined the record evidence cited to and considered it to the extent that it properly controverts Chandler’s assertions and there is supporting record evidence.<sup>1</sup>

While I give Dennison some leeway on that score, I cannot do the same with respect to additional factual statements contained in her omnibus “Factual Narrative” that might be material to Dennison’s claims against Chandler. Dennison has not set forth these facts in an additional statement of material facts as required by the Local Rule, Dist. Me. Loc. R. Civ. P. 56(c),(e), and has thereby not given Chandler the opportunity to properly controvert the facts that pertain to his actions (though Chandler did, begrudgingly, attempt to address some of the facts in this narrative in a reply statement of facts). I will not address any of the facts contained in the narrative as if they were additional statements of material facts pertaining to this motion.

### ***Undisputed Material Facts***

Dennison’s claims against Chandler concern two discreet incidents that transpired when Dennison reported to Chandler and was assigned cleaning duties in the prison’s recreation area.

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<sup>1</sup> The only “record material” before the court on this motion is the copy of the Chandler deposition provided by Chandler in support of his motion. In a letter to the clerk dated April 11, 2002, counsel for plaintiff indicated that he was requesting defendants’ counsel to file the original Dennison transcript. Neither the original nor a copy was forthcoming. Local Rule 26(c) allows the use of copies of transcript testimony when offered in support of motions. The non-availability of the transcript does not ultimately effect the outcome of this motion because even if the properly disputed facts are as stated by plaintiff, her claim would fail as to Chandler for the reasons stated herein.

On August 31, 2000, Dennison and other female prisoners who had job assignments of dorm laborers were called to clean in the recreation area by Chandler, the recreation officer. Chandler told Dennison to scrub shoe scuff marks off a portion of the recreation area floor. Dennison told Chandler that she could not do the work assigned to her without pain because of medical problems.<sup>2</sup> Chandler checked the medical restrictions sheet on file, making sure, by checking the date, that the medical restrictions were current.<sup>3</sup> The restrictions listed for Dennison were: “no repeated bending,” “no squatting,” “no lifting greater than 10 lbs,” and “no prolonged standing, greater than 1 hr., without 10 min. rest.” Chandler believed that the assigned task did not violate any of these restrictions since the scrubbing could be done sitting down and, thus, did not require repeated standing, squatting, bending, or the lifting of equipment.<sup>4</sup>

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<sup>2</sup> Dennison responds to this paragraph by asserting that Dennison was more specific than just stating that she could not work without pain because of her medical problems. She asserts that she told Chandler that she had been seen the day before by Kim Partridge, a registered nurse, for worsening back pain and had been prescribed a heating pad and medications. She also had been put on a list to see a doctor. This, Dennison argues, put Chandler on notice that there was a new condition that was not reflected on the written work restrictions.

In support of this dispute, Dennison cites to paragraphs seven through nine of her consolidated “Factual Narrative.” These paragraphs state that Dennison saw Partridge on August 29 and reported pain in her back and neck and she put in a slip formally requesting medical attention. On August 30, 2000, Partridge gave Dennison a heating pad for her back and neck and Partridge put her on the list to see the doctor. In support of these factual assertions Dennison cites to page nine of Dennison’s December 24, 2001, deposition. In Chandler’s reply he states that the testimony merely relates to the exchange between Partridge and Dennison and does not establish that Chandler knew about the details of the incident. As noted earlier, the deposition is nowhere on file with the court so I cannot come to a conclusion as to whether the Dennison testimony qualifies the statement of fact. However, assuming the transcript supports Dennison’s characterization, it would not alter my ultimate conclusion.

<sup>3</sup> Dennison asserts that work restrictions upon which Chandler relied were dated March 2000 referencing Exhibit 1 of the Chandler deposition. Chandler replies that Chandler’s deposition testimony concerning this exhibit was that it was not the form he had in front of him, though the restrictions listed were the same. The deposition testimony cited by Chandler supports Chandler’s dispute. (Chandler Dep. at 13-14.) I conclude that Dennison’s attempt to qualify or dispute this assertion is not supported by the record and thus does not place this assertion into dispute.

<sup>4</sup> Dennison counters that Chandler was reading these restrictions in an “unreasonably narrow manner” as restricting only lifting literally whereas it could be read to comprehend tasks necessitating the use of “elbow grease”: activities such as “pulling, pushing, carrying, toting, and other actions involving arm strength and back and shoulder strength.” (Pl.’s SMF at 2.) This dispute is by way of argument rather than fact and concerns whether or not Chandler’s response to Dennison, including his efforts at reading the work restrictions, amounted to a deliberate indifference.

Although he believed that the scrubbing assignment did not violate the medical restrictions Chandler called a nurse in the medical department to double check. He explained to the nurse what the assigned job was and asked whether Dennison was able to perform the scrubbing given her medical restrictions. The nurse responded that Dennison was capable of doing the work. Chandler reported this response to Dennison and told her to scrub the floor.

Rather than sit, Dennison chose to stand and scrub the floor using her foot. Chandler did not object to this approach. While Dennison was scrubbing it appeared to Chandler that she was forcing herself to cry by holding her breath, shaking her shoulders, and whimpering progressively louder.<sup>5</sup> A few minutes later Dennison complained to Chandler about being in pain and asked him to call the nurse. Chandler called the nurse again. He told her that Dennison was scrubbing from a standing position and that she said she was in pain. The nurse said that standing and scrubbing did not violate Dennison's medical restrictions. Chandler reported the nurse's opinion to Dennison and told her to go back to work. Dennison went back to work and appeared to continue in her efforts to force herself to cry.<sup>6</sup>

Later Dennison told Chandler that she had vomited from pain and Chandler called the nurse again and reported this information. The nurse told Chandler that the work was within Dennison's capabilities and that Dennison could force herself to vomit.<sup>7</sup> Chandler

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<sup>5</sup> Dennison asserts that she was crying because she was in pain, citing her deposition testimony that has not been provided to the court. The import of Chandler's factual statement is what his frame of mind was viewing Dennison's outward behavior, so even if I assume Dennison's own explanation for her behavior is supported by her deposition testimony, my reasoning below would not be altered.

<sup>6</sup> Again, Dennison asserts that she was crying because she was in pain, citing her deposition testimony that has not been provided to the court.

<sup>7</sup> Citing to her deposition testimony, Denison attempts to qualify this assertion. She explains that several years before her incarceration she had a surgical procedure that narrowed the opening to the stomach in an attempt to control her eating. Because of the narrowing, food can easily get stuck in the

reported to Dennison that the nurse stated that Dennison was capable of going back to work. Dennison stated again that she was in pain. Chandler believed that Dennison was faking but did not send her back to work because the work period was almost over.

The next interaction between Dennison and Chandler was on September 14, 2000, when Dennison was called once again by Chandler to the recreation area to do cleaning. Upon her arrival Dennison told Chandler that she had just been taken off a medical work hold, she had medical restrictions, she had been diagnosed with osteoporosis, and she could not do the work assigned to her. This time Dennison was asked to perform a standard cleaning of the gym floor, entailing first a dry mopping of the floor, then a wet mopping, and then another dry mopping.

Chandler called a nurse in the medical department and explained to her what the job entailed and asked whether there was anything new that he needed to know that was not on the current medical restrictions sheet. He asked if the assigned job would violate her medical restrictions.<sup>8</sup> Chandler did not consider if moving the wheeled plastic bucket with water in it would exceed Dennison's medical restrictions, though he did report this as part of the work description when speaking with the nurse. The nurse told Chandler that Dennison was capable of doing the job described.

Chandler told Dennison that she would have to do the work. Dennison proceeded to do part of the work slowly. While working Dennison whined and complained

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opening and Dennison must initiate a gag reflex to free the food. Dennison takes Chandler to task for putting a "negative spin" on Dennison's condition, an attitude that she argues "demonstrates Chandler's deliberate indifference to her pain." (Pl.'s SMF at 3-4.) Since Chandler's paragraph contains only a report of what the nurse told Chandler and no representation of how he construed her vomiting, Dennison must be complaining about what the statement of material fact implies.

<sup>8</sup> With respect to this factual assertion Dennison provides argumentation about how Chandler ought to have viewed her condition and followed up with the nurse on Dennison's report concerning the recently lifted work hold and the osteoporosis diagnosis.

periodically that the work assignment violated her medical restrictions.<sup>9</sup> Chandler did not think that Dennison's slow pace and failure to complete the job were any indication that she could not do the work, that she was in pain, or that she was being injured at work, though Chandler did report to his supervisor that Dennison said she was in pain.<sup>10</sup> At the end of the work period Chandler sent Dennison back to the dorm.

### *Discussion*

The United States Supreme Court has framed the broad outlines of the deliberate indifference inquiry in two cases: Estelle v. Gamble, 429 U.S. 97 (1976) and Farmer v. Brennan, 511 U.S. 825 (1994). The Estelle Court identified in the Eighth Amendment protection the "government's obligation to provide medical care for those whom it is punishing by incarceration." 429 U.S. at 103. It observed: "An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met." Id. The Court made it clear that prison guards as well as prison doctors have an obligation to react in conformity with the Eighth Amendment in responding to an inmate's medical conditions. See id. at 104-05.

In Farmer the Court more precisely articulated the standard a plaintiff must meet to hold a prison official liable under the Eighth Amendment. It identified two prongs. First, the deprivation alleged must be "objectively 'sufficiently serious.'" 511 U.S. at 834 (quoting Wilson v. Seiter, 501 U.S. 294, 298 (1991)). Second, the defendant must

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<sup>9</sup> Dennison qualifies this statement of fact by cross-referencing her consolidated "Factual Narrative." She asserts that she periodically told Chandler that she was in pain, that the work was painful, and that the pain made her cry. She says she was begging and crying but had resigned herself to doing the gym floor. Her factual support for these assertions lies in her deposition testimony which, I note once again, has not been provided to the court. For the reason stated earlier in footnote 5, even if I assume that the deposition is proper support for this qualification my conclusions would not change.

<sup>10</sup> With respect to Dennison's assertion that she reported to Chandler that she was in pain, Dennison cites to Chandler's deposition testimony that he told his supervisor that Dennison was reporting pain. (Chandler Dep. at 69.) In his reply Chandler does not dispute this assertion.

have a culpable state of mind, which means that the defendant was deliberately indifferent to the inmate's health or safety. Id.

While Estelle and Farmer provide the broad contours of the deliberate indifference inquiry, this case requires a more particularized focus. Dennison's claim against Chandler is not that Chandler did not provide her with adequate medical care but that he was deliberately indifferent to the fact that her medical condition made her assigned work responsibility painful, risked exacerbating her condition, and resulted in injury.<sup>11</sup> Thus, Dennison's claim against Chandler is a type of hybrid deliberate indifference claim.

Several other courts have addressed similar hybrid work/medical conditions claims. A common formulation of the plaintiff's burden is that he or she must generate proof that the defendants knowingly compelled him or her "to perform labor that is beyond an inmate's strength, dangerous to his or her life or health, or unduly painful." Sanchez v. Taggart, 144 F.3d 1154, 1156 (8th Cir.1998) (citing Madewell v. Roberts, 909 F.2d 1203, 1207 (8th Cir. 1990); accord Williams v. Norris, 148 F.3d 983, 987 (8th Cir. 1998); Berry v. Bunnell, 39 F.3d 1056, 1057 (9th Cir. 1994); Jackson v. Cain, 864 F.2d 1235, 1246 (5th Cir. 1989). This analysis is fact driven, for "the constitutionality of a particular working condition must be evaluated in the light of the particular medical conditions of the complaining prisoner." Jackson, 864 F.2d at 1246. Dennison's claim against Chandler, drawing all reasonable inferences in Dennison's favor, simply does not support a conclusion that a reasonable jury could find that Chandler knowingly made

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<sup>11</sup> The parties dispute the notion of injury. Chandler states that Dennison did not complain during the two work sessions that she was "injured" and that she has not established a work related injury stemming from these two incidents. Dennison contends that she said to Chandler that she was injured and that when she got back to her dorm she reported that she had been injured. The resolution of this motion is not tied to whether Dennison was injured or in sufficient pain. Accordingly, Dennison's actual deposition testimony would not change the result.

Dennison perform labor that was beyond her strength, dangerous to her health, or unduly painful.

It is undisputed that Chandler checked Dennison's written work restrictions and, on both occasions, called a nurse in the medical department with the specifics concerning Dennison's protests and the demands of the task he envisioned for her. He followed the advice given by the nurse who had the expertise about the status of Dennison's medical conditions, including, with respect to the second incident the recent osteoporosis diagnosis. Dennison has provided no direct or inferential factual support that would suggest that Chandler's reliance on the medical department's analysis of Dennison's work capabilities was feigned or unjustified. What is more, the two work assignments were rather run of the mill, certainly not inherently demanding or demeaning. Chandler's independent reading of the work restriction to allow the specific tasks seems on its face reasonable and there is no indication that he went out of his way to press Dennison into pain that exceeded her physical limitations. I can identify nothing in this record that would justify drawing such an inference. In short there is no circumstantial evidence in this record that would support an inference that Chandler had actual knowledge that these two work assignments would pose a "substantial risk" to Dennison's health and safety.

Farmer, 511 U.S. at 842-43 & n.8.

Though Dennison argues that Chandler's interpretation of Dennison's behavior evidences deliberate indifference towards Dennison the fact that Chandler thought that Dennison was faking her crying and vomiting is not in and of itself a sign of deliberate indifference to her plight. Standing alone, without other indications that this perception was driven by some sort of purposeful misreading or personal antagonism, it at most

demonstrates a negligent misapprehension on Chandler's part; Chandler's negligence, if any, in apprehending Dennison's health related work limitations is not actionable as a civil rights claim via 42 U.S.C. § 1983. Gill v. Mooney, 824 F.2d 192, 196 (2d Cir. 1987) (observing that if the defendants/nurses believed the plaintiff was feigning illnesses and denied him admission to the hospital ward in the belief that he was not ill, their error would at most qualify as negligence rather than a constitutional violation). See also Daniels v. Williams, 474 U.S. 327, 662-63 (1986) (observing that 42 U.S.C. § 1983 provides a right of action for civil rights violations and cannot be used to sue correctional officials for negligence); accord Jackson, 864 F.2d at 1246.

My conclusion is in line with those cases that have addressed similar hybrid claims by inmates concerning health concerns and prison working conditions. For instance, in a case where the plaintiff had asserted that the prison officials ordered him to continue work only after checking with the prison hospital staff and being told that the plaintiff was capable of performing the assigned field work in dusty conditions even though he had asthma, the Fifth Circuit concluded that the allegations, even if true, could not be the basis for Eighth amendment liability. Lewis v. Lynn, 236 F.3d 766, 767-68 (5th Cir. 2001) (per curiam).<sup>12</sup> The summary judgment record in front of me echoes the Lewis record on this score.

The material facts in this case are not on par with those cases where courts have identified a sufficient factual premise for a deliberate indifference claim to justify proceeding to trial and/or imposing liability. For instance, the Eighth Circuit in Sanchez reversed summary judgment in favor of defendants because it concluded that the

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<sup>12</sup> The Fifth Circuit affirmed a district court's decision that the plaintiff was not entitled to default judgment against the non-answering officer defendants and, further, that the non-answering defendants were entitled to the benefit of the summary judgment entered in favor of non-defaulting defendants.

evidence and inferences demonstrated that the plaintiff had told the defendant correctional unit manager that he had a back injury that restricted his working ability and that there was confirmation of this in his file yet the defendant failed to inquire further and insisted that the plaintiff load sandbags into a truck. 144 F.3d at 1156. Later, in Williams the Eighth Circuit concluded that the defendants were properly held liable for Eighth Amendment violations given that the defendants knew of the plaintiff's work restrictions due to serious health conditions, required him to perform work the defendants were aware was in contravention to these restrictions and dangerous to his health, and ignored the plaintiff's request for a reevaluation of his heavy labor assignment. 148 F.3d at 987. Likewise, in Jackson, the Fifth Circuit concluded that summary judgment was improvidently granted in light of the genuine factual dispute concerning whether the defendants knew that the pro se plaintiff's syphilis would be aggravated by his work-crew assignment and in view of the specific allegations that he was singled out by the defendants for harsher jobs. 864 F.2d at 1247. See also Madwell v. Roberts, 909 F.2d 1203, 1207 (8th Cir. 1990) (reversing summary judgment as to deliberate indifference claim in which plaintiff with arthritis was required to work at night sitting on a concrete floor in an unheated gym, and was not provided a coat); Gill, 824 F.2d at 195 (concluding that allegations concerning correction officer's order to plaintiff to move his belongings, including a 40 pound bed-board, despite being informed by plaintiff that the order contravened his posted medical restrictions, were sufficient at a motion to dismiss stage to state a claim for deliberate indifference in light of the liberal pleading standards afforded pro se plaintiffs).

Having concluded that Dennison has not carried her summary judgment burden of demonstrating that there is a genuine dispute of material fact as to whether Chandler's conduct violated Dennison's Eighth Amendment protections against cruel and unusual punishment, I need not discuss Chandler's contention that he would be entitled to qualified immunity.

### CONCLUSION

For these reason I recommend that the Court **GRANT** Chandler's motion for summary judgment.

### NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Dated May 23, 2002

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Margaret J. Kravchuk  
U.S. Magistrate Judge

TRLIST

PR1983

U.S. District Court  
District of Maine (Bangor)  
CIVIL DOCKET FOR CASE #: 00-CV-266

DENNISON v. PRISON HEALTH SERVIC, et al  
12/26/00  
Assigned to: Judge GEORGE Z. SINGAL  
Demand: \$0,000  
Lead Docket: None  
Question  
Dkt# in other court: None

Filed:  
Jury demand: Both  
Nature of Suit: 550  
Jurisdiction: Federal

Cause: 42:1983 Prisoner Civil Rights

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KIM PARTRIDGE, RN  
    defendant

JAMES E. FORTIN, ESQ.  
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ERIC HANSEN  
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